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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Archives and Records Administration's Records Center
Revolving Fund -- Property Damage Recovery

File: B-302962

Date: June 10, 2005

DIGEST

The National Archives and Records Administration (NARA) should collect amounts sufficient to repair damages to facilities financed by the Records Center Revolving Fund, whether that damage is caused by NARA's federal agency customer, the customer's contractor or NARA's own contractors, and deposit those amounts into the revolving fund. Agency customers that receive amounts from their own contractors to cover such repairs should transfer those amounts to the revolving fund.

DECISION

The General Counsel of the National Archives and Records Administration (NARA) has requested an advance decision under 31 U.S.C. § 3529 on whether NARA may collect and retain in its Records Center Revolving Fund payments for damages caused by a customer agency or the agency's contractor to facilities financed by the revolving fund. Letter from Gary M. Stern, General Counsel, NARA, to Susan Poling, Associate General Counsel, GAO, Mar. 31, 2004 (Stern Letter). Specifically, the General Counsel asks: (1) whether NARA may receive payments from an agency customer for such damages as an exception to the so-called interdepartmental waiver doctrine;¹ (2) whether NARA may retain payments received from a customer's contractor for damages caused by that contractor; and (3) whether an agency customer may transfer to NARA amounts that the customer received from its contractor for reimbursement for damages, or whether the agency customer must deposit those funds in the Treasury as miscellaneous receipts. *Id.* Additionally, from the facts that NARA poses, we identify a fourth question: (4) whether NARA may

¹ The interdepartmental waiver doctrine is discussed in detail *infra* at page 3.

retain payments received from its own NARA contractors for damages caused by the contractor to facilities financed by the revolving fund.

As we explain below, NARA should collect amounts sufficient to cover repair costs from entities that damage facilities financed by the Records Center Revolving Fund, whether that damage is caused by the agency customer, the customer's contractor or NARA's own contractors, and deposit those amounts into the revolving fund. Further, agency customers that receive amounts directly from their own contractors to cover such repairs should transfer those amounts to the revolving fund.

BACKGROUND

NARA stores temporary and pre-archival records that belong to other federal agencies in its Records Center Program Facilities. Federal agencies may enter into agreements with NARA to transfer and store those records at NARA records centers. *See* 44 U.S.C. § 3103; 36 C.F.R. §§ 1220.38(a), 1228.150, 1228.156(a). *See generally* 44 U.S.C. §§ 2901–2909 (Records Management). When a federal agency customer or that customer's contractor damages a loading dock door while delivering records for storage at a national or regional NARA records center, causing several thousand dollars worth of damage, NARA, for security and other reasons, must immediately repair the damage.² Stern Letter.

The Treasury and General Government Appropriations Act, 2000, established a “Records Center Revolving Fund” (revolving fund) to pay for expenses and equipment necessary to provide storage and related services for such temporary and pre-archival records of federal agencies and other instrumentalities of the federal government. Pub. L. No. 106-58, Title IV, Nat'l Archives & Recs. Admin., Recs. Ctr. Revolving Fund, 113 Stat. 430, 460-61 (Sept. 29, 1999). NARA must store these records at “Federal National and Regional Records Centers” and must credit the revolving fund with user charges received from federal agencies as payment for the provision of personnel, storage, materials, supplies, equipment and authorized services. *Id.* The rates that NARA charges must “return in full the expenses of operation, including reserves for accrued annual leave, worker's compensation, depreciation of capitalized equipment and shelving, and amortization of information technology software and systems.” *Id.* The Congress also appropriated an “initial capitalization” to the fund for start-up costs. *Id.* The revolving fund may also retain up to four percent of its total annual income as “an operating reserve or for the replacement or acquisition of capital equipment, including shelving, and for the improvement and implementation of the financial management, information technology, and other support systems” of NARA. *Id.* At the close of the fiscal year,

² NARA would be responsible for repairing damages to those facilities owned by the General Services Administration. Stern Letter. *See generally* 41 C.F.R. §§ 102-74.10 – 74.35 (federal property management regulations).

funds in excess of the four percent must be deposited into the Treasury as miscellaneous receipts. *Id.*

According to the Senate Appropriations Committee report accompanying Public Law 106-58, the purpose in establishing the revolving fund was to make the NARA records center operations self-sufficient, providing services on a standard price basis to federal agency customers, without further appropriation from Congress. S. Rep. No. 106-87, at 68 (1999).

Apart from the revolving fund, NARA receives annual appropriations “for repair, alteration, and improvement of *archives facilities*, and to provide adequate storage for *holdings*.” Pub. L. No. 108-199, Div. F, Title IV, 118 Stat. 3, 336-37 (Jan. 23, 2004) (emphasis added). *See also* Pub. L. No. 106-58, 113 Stat. 430, 460. NARA officials informally advised us that they construe the term “holdings” to refer to documents for which NARA has legal and physical custody, that is, the permanent records of the National Archives of the United States, while “temporary and pre-archival records of federal agencies” are records for which NARA has physical, but not legal custody. *See, e.g.*, 36 C.F.R. § 1228.272(c) (legal custody of records passes to NARA when a NARA official signs Standard Form 258, *Agreement to Transfer Records to the National Archives of the United States*, acknowledging receipt of records). NARA officials further advised us that the permanent archives and temporary agency records are housed separately, and that NARA accounts separately for the respective expenses for their care. *See, e.g., Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2003*: Hearing before a Subcommittee of the House Committee on Appropriations, 107th Cong. 612, 614-15, 657 pt. 4 (2002) (NARA 2003 Budget Congressional Justification).

The matter before us concerns the collection and disposition of funds received for property damage to federal records centers financed by the revolving fund, not for NARA’s operations related to “holdings” (the permanent records of the National Archives) that are financed by the annual appropriations.

ANALYSIS

As a general proposition, amounts recovered by the government for loss or damage to government property cannot be credited to the appropriation available to repair or replace the property, but must be deposited in the Treasury as miscellaneous receipts. 64 Comp. Gen. 431 (1985). It has long been the rule that where one federal agency damages property of another federal agency, funds available to the former may not be used to pay claims for damages by the latter. 65 Comp. Gen. 910, 911 (1986); 46 Comp. Gen. 586, 587 (1966). The prohibition, known as the “interdepartmental waiver” doctrine, is based primarily on the concept that property of the various agencies is not the property of separate entities but rather of the government as a single entity, and there can be no reimbursement by the government for damages to or loss of its own property. 46 Comp. Gen. at 586, 587.

The interdepartmental waiver doctrine does not apply, however, where an agency has statutory authority to retain income derived from the use or sale of certain property, and the governing legislation shows an intent for the particular program or activity to be self-sustaining. 24 Comp. Gen. 847 (1945). Thus, where an agency operation is financed through reimbursements or a revolving fund, the prohibition does not apply. 65 Comp. Gen. 910 (1986). *See also* 3 Comp. Gen. 74, 75 (1923). In such cases, the agency should recover amounts sufficient to cover loss or damage to property financed by the reimbursements or revolving fund, regardless of whether that damage is caused by another federal agency or a private party, and deposit those funds into the revolving fund. *See* 65 Comp. Gen. 910. The rationale for this exception is that the revolving fund, established to operate like a self-sustaining business, should not bear the cost for “other than objects for which the fund was created.” *Id.*

Thus, the Government Printing Office (GPO) was required to reimburse the General Services Administration (GSA) for expenses connected with the repair of a motor pool revolving fund vehicle occasioned by an accident in which a GPO employee was the driver. 59 Comp. Gen. 515 (1980). The repair expenses were a part of the cost of operating and maintaining a motor vehicle pool. *Id.* Since the Congress intended the GSA revolving fund to operate on a businesslike basis, it would have frustrated this objective to impose upon the revolving fund the cost of a loss for which the managing agency was in no way responsible. *Id.* *See also* 27 Comp. Gen. 352 (1947); 3 Comp. Gen. 74 (1923).

The interdepartmental waiver rule does not apply in the situation posited by NARA, where a federal agency customer damages property maintained by the records center revolving fund. In such a situation, the agency customer should reimburse the revolving fund for the expenses of repairing that damage. 59 Comp. Gen. 515. Repair expenses for damages to revolving fund facilities are expenses of providing storage and related services for temporary and pre-archival federal records. Pub. L. No. 106-58, 113 Stat. 460. NARA is required by statute to credit the revolving fund with user charges at rates that “return in full the expenses of operations.” Pub. L. No. 106-58, 113 Stat. 461. Therefore amounts reimbursed for those damages should be returned to the revolving fund. 59 Comp. Gen. 515. Congress intended the records center revolving fund to operate like a self-sufficient business and that rates charged return in full the expenses of operation, Pub. L. No. 106-58, 113 Stat. 461, without further appropriation from Congress. To impose upon the revolving fund a loss for which NARA was in no way responsible would require NARA to spread the costs of damages caused by one customer to all NARA customers, in effect, causing other customer agencies to subsidize storage and service provided to another agency customer.³ 59 Comp. Gen. 515.

³ This situation differs from the facts of B-301714, Jan. 30, 2004. In that case we held that the Library of Congress should use administrative fees collected from Federal
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For these same reasons, NARA should deposit into the revolving fund any payments that NARA receives as a result of damages caused by an agency customer's contractor, or by NARA's own contractors, to record center facilities maintained by the revolving fund. *Id.* In this regard, it would make no difference whether NARA's customer agency transferred to NARA amounts that the customer collected from its contractor or whether the contractor paid NARA directly.

CONCLUSION

NARA should collect amounts sufficient to cover repair costs from entities that damage facilities financed by the Records Center Revolving Fund, whether that damage is caused by the agency customer, the customer's contractor or NARA's own contractors, and deposit those amounts into the revolving fund. Agency customers that receive amounts directly from their own contractors to cover such repairs should transfer those amounts to the revolving fund.

/signed/

Anthony H. Gamboa
General Counsel

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Library and Information Network's (FEDLINK) revolving fund customers to cover a loss resulting from advance payments to a contractor who subsequently defaulted and declared bankruptcy, rather than assign the loss to the specific agencies whose orders were placed with that contractor. The federal customer agencies in B-301714, Jan. 30, 2004, on whose behalf the Library placed the orders, bore no responsibility for the contractor's default. Here, the agency or the agency's contractor is clearly at fault and should bear the cost of repairing any damages they caused to facilities financed by the revolving fund.